

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Danny Rayburn Smith,

Plaintiff,

vs.

County of Pickens; Sheriff David Stone,
Pickens County Sheriff; Dewey Smith,
Captain; Anderson County; Michael
Sloan, Detective; Dan Rhodes;
Greenville County; David Hanks,
Detective; Larry Martin, Detective,

Defendants.

Civil Action No.8:10-cv-02265-JMC-JDA

**REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE**

Plaintiff brought this action under 42 U.S.C. § 1983, alleging deprivation of his constitutional rights under the Fourth and Fifth Amendments. [Doc. 29.] Plaintiff initially filed the present action in the Court of Common Pleas in Pickens County, South Carolina on August 3, 2010, naming County of Pickens and Sheriff David Stone as defendants. [Doc. 1-1 at 3–5; Doc. 29-2 at 3–5.] These defendants filed a Notice of Removal on August 31, 2010. [Doc. 1.]

Plaintiff filed an Amended Complaint on December 2, 2010, adding as defendants Larry Martin (“Martin”), Dewey Smith, Anderson County, Michael Sloan, Dan Rhodes, Greenville County, and David Hanks. [Doc. 29.] Plaintiff was advised by Proper Form Order to complete one summons for each newly added defendant and to provide the defendants name and complete street address. [Doc. 25] The Order also warned that the United States Marshal cannot serve an inadequately identified defendant, and unserved defendants may be dismissed as parties to the case. [*Id.* at 2.] On February 22, 2011, the Court directed Plaintiff to provide an updated address for Martin because his summons was returned unexecuted. [Doc 80.] No additional address was provided by Plaintiff, and Martin was never served.

An Order has been entered in this case granting summary judgment in favor of the defendants who were served. [Doc. 154.] Because Martin was never served in this action as directed by the Serve Order [Doc. 39] and the Order requesting an updated address for Martin [Doc. 80], the Court recommends this action be dismissed as to Martin.

CONCLUSION AND RECOMMENDATION

Wherefore, based upon the foregoing, the Court recommends this action be DISMISSED as to Defendant Larry Martin.

IT IS SO RECOMMENDED.

s/Jacquelyn D. Austin
United States Magistrate Judge

August 25, 2011
Greenville, South Carolina